

Dated: April 28, 2011



The following is ORDERED:

A handwritten signature in black ink, appearing to read "Tom R. Cornish", is written over a horizontal line.

TOM R. CORNISH
UNITED STATES BANKRUPTCY JUDGE

NOT FOR PUBLICATION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN RE:

GARY LYNN BELL
ROBERTA ANN BELL,
Debtors.

Case No. 10-80131-TRC
Chapter 7

RAFAEL VEGA, JR.,
Plaintiff,

v.

Adv. Case No. 10-08033-TRC

GARY LYNN BELL and
ROBERTA ANN BELL,
Defendants.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Before the Court is Defendants' Motion for Summary Judgment (Docket Entry 43) and Plaintiff's Response (Docket Entry 47). After reviewing the briefs and record submitted, the Court determines that Plaintiff's Motion for Summary Judgment should be denied.

To prevail on a motion for summary judgment, the moving party must establish that there is "no genuine issue as to any material fact and that the movant is entitled to judgment as a matter

of law.” Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056. Facts must be viewed in the light most favorable to the nonmoving party, but only if there is a genuine dispute as to those facts. *Scott v. Harris*, 550 U.S. 372, 380 (2007). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted).

The Court finds that there are genuine issues of fact for trial. The facts presented by Defendants in their Motion appear to be in genuine dispute, and Defendants have not established a prima facie case entitling them to judgment as a matter of law. Deposition testimony of Mrs. Bell and Mr. Vega is contradictory, raising factual issues regarding the parties’ agreement regarding the procurement of insurance benefits, representations made by Defendants to Plaintiff, and financial information. The Court cannot make these factual determinations based upon the record presented on summary judgment. Accordingly, Defendants’ motion must be denied, and the case shall proceed to trial as previously ordered.

IT IS THEREFORE ORDERED that Defendants’ Motion for Summary Judgment (Docket Entry 43) is **denied**, and this matter shall proceed to trial in accordance with this Court’s Order and Notice of Trial (Docket Entry 38).

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